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In The

Supreme Court of the United States

COUNTY OF LOS ANGELES and
LOS ANGELES COUNTY SHERIFF'S DEPARTMENT,

Petitioners,

vs.

VALERIE ANN STREIT, et al.,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

REPLY BRIEF OF PETITIONERS

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INTRODUCTORY STATEMENT

Petitioners County of Los Angeles and Los Angeles County Sheriff's Department ("petitioners") hereby file their reply brief in support of their Petition for Writ of Certiorari ("Petition") filed with this Court on June 12, 2001. The Petition was placed on the docket on June 13, 2001, and seeks review of the decision of the United States Court of Appeals for the Ninth Circuit, which held, in contravention of a prior decision by the California Court of Appeal, that sheriffs in California *generally* act on behalf of the counties and *particularly*, when setting jail policies concerning release of prisoners, for section 1983 purposes.

Since *McMillian v. Monroe County*, 520 U.S. 781 (1997), where this Court unequivocally stated that the question of whom an official has policymaking authority for is wholly dependent on an analysis of *state law*, there have been two decisions by the United States Court of Appeals for the Ninth Circuit, one decision by the California Supreme Court and one decision by the California Court of Appeal involving whether a particular county officer is a policymaker for the state or county government for purposes of section 1983. *See Pitts v. County of Kern*, 17 Cal.4th 340, 949 P.2d 920, 70 Cal.Rptr. 823 (1998) (When preparing to prosecute and when prosecuting criminal violations of state law and when training and developing policy in these areas, district attorneys in California represent the state and are not policymakers for the counties.); *Weiner v. San Diego County*, 210 F.3d 1025 (CA9 2000) ("All relevant California cases, including *Pitts*, have held that district attorneys are state officers for the purpose of investigating and proceeding with criminal prosecutions."); *County of Los Angeles v. Superior Court (Peters)*, 68 Cal.App.4th 1166, 80 Cal.Rptr.2d 860 (1998), *review denied* (March 17, 1999) (Where the Los Angeles County Sheriff acts as a state officer performing law enforcement duties by setting policies concerning release of persons

from county jails, he acts on behalf of the state, not County.); *Streit v. County of Los Angeles*, 236 F.3d 552 (CA9 2001) (The Los Angeles County Sheriff acts as a policy-maker for the County of Los Angeles, not the state, in administering jail policy concerning release of prisoners.)

Contrary to respondents' contention, there is nothing "well-founded" nor "routine" about the Ninth Circuit's rationale and determination in *Streit* that sheriffs in California generally act on behalf of the counties and in particular, when administering jail policy concerning release of prisoners. Up until the *Streit* decision, California federal courts confronting the issue were far from clear as to whether California sheriffs act on behalf of the counties in performing either law enforcement duties or other functions for section 1983 purposes. The published opinion in *Streit* does nothing to settle this important area of law. Indeed, one of the fundamental problems with the *Streit* opinion is that it does not provide any meaningful guidance as to the differentiation between law enforcement versus non-law enforcement functions. By simply labeling the function at issue as "jail management" and thereafter concluding that it is more akin to an administrative task, the Ninth Circuit simply failed to recognize that when sheriffs are operating the jails, they are acting as correctional officers and carrying out punishment duties which are under the supervision of the Attorney General, not the local government entity. Moreover, respondents' suggestion that a distinction should be made between enforcing the laws under the State of California and placing those who violate the laws of the state behind bars would be nonsensical and would impose local government liability under the most arbitrary circumstances. Neither the Ninth Circuit, nor respondents, provide any basis to make any meaningful analytical distinction between these two functions.

I. BY COMPLETELY MISCONSTRUING CALIFORNIA STATUTES, THE NINTH CIRCUIT HAS CREATED AN IRRECONCILABLE CONFLICT WITH A DECISION OF THE STATE APPELLATE COURT ON VIRTUALLY THE SAME ISSUE.

The California trial courts have had no trouble following the analytical framework set out by the California Supreme Court in *Pitts* and the appellate court in *Peters*, both of which correctly applied the principles set forth by this Court in *McMillian*, for determining which government officials are final policymakers for entity defendants sued under section 1983.

Rather than squarely addressing the issue presented in the Petition, respondents mistakenly contend that because *Peters* was not rendered by a "state court of last resort" any conflict between *Streit* and *Peters* would not meet the standards of Rule 10(a). (Opp. Brief at 4.) This Court has repeatedly held that a conflict between the decision of a federal court of appeal and either the state's highest court or state intermediate courts of appeal is an appropriate basis for review. *See Six Companies v. Highway District*, 311 U.S. 180 (1940); *West v. American T & T Co.*, 311 U.S. 223 (1940); *Stoner v. New York Life Ins. Co.*, 311 U.S. 464 (1940). Indeed, allowing federal courts to ignore state precedent regarding the interpretation of state law allows federal courts to mischaracterize state law, among other things.[1]

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[1] In holding that the sheriff was a county official for purposes of general law enforcement duties, at least one federal district court has recognized that its holding was directly contrary to the holdings in factually and legally similar cases decided by the California Court of Appeal and California Supreme Court in *Peters* and *Pitts*, respectively. *See Brewster v. County of Shasta*, 112 F.Supp.2d 1185, 1191 (E.D. Cal. 2000).

A. Neither California Government Code § 25303 Nor § 23013 Confer Power Or Control Upon The County Boards Of Supervisors For The Management Of The Jails.

Like the Ninth Circuit, respondents erroneously cite California Government Code § 25303 for the proposition that the county boards of supervisors have direct authority over management of the county jails. (App. at A21; Opp. Brief at 10.) That alleged authority of the boards of supervisors cannot be found in the wording of section 25303, nor in the cases interpreting it. Indeed, the California courts have explicitly held that section 25303 grants no such authority to county boards of supervisors. For instance, in *Brandt v. Bd. of Supervisors*, 84 Cal.App.3d 598, 601-602, 147 Cal.Rptr. 468, 470-471 (1978), the court stated:

> Except in rare instances, the board of supervisors has no direct authority over the jail, and even where direct authority is given, its exercise is made discretionary by statute. [Citing Government Code § 25380 pertaining to the construction and maintenance of jail facilities in other counties and Government Code § 23013 empowering the board of supervisors to establish a county department of corrections to take over the operation of the jail in place of the sheriff]. The only clear and present duty enjoined by law upon a board of supervisors with regard to a county jail is to provide the sheriff with food, clothing, and bedding for prisoners (Pen. Code, § 4015) and to pay as a county charge other expenses incurred in the keeping of prisoners (Gov. Code, § 29602). . . . *We note that the board not only had no duty but also had no right to control the operation of the jail;* a board of supervisors has no legal authority to use its budgetary power to control employment in the operation of the sheriff's office (*see Hicks v.*

> *Board of Supervisors* (1977) 69 Cal.App.3d 228, 241 [138 Cal.Rptr. 101]). Only the sheriff has control of and responsibility for distribution and training of personnel and the specific use of the funds allotted to him.

(Emphasis added.)

Likewise, in *People v. Langdon*, 54 Cal.App.3d 384, 390, 126 Cal.Rptr. 575 (1976), the court held:

> Although the board of supervisors has authority to supervise county officers in order to insure that they faithfully perform their duties (*see* Gov. Code, § 25303), it does not have the power to perform the county officers' statutory duties for them *or to direct the manner in which the duties are performed.*

(Emphasis added.)

Eighteen years later, the California Supreme Court affirmed the correctness of the observation by the appellate court in *Langdon*:

> The *Langdon* court went on to observe, correctly, that the board of supervisors 'does not have the power to perform the county officers' statutory duties for them or direct the manner in which the duties are performed.'

Dibb v. County of San Diego, 8 Cal.4th 1200, 1209, fn.4, 884 P.2d 1003, 1008, 36 Cal.Rptr.2d 55 (1994).

In short, contrary to respondents' suggestion, there simply is no support for the Ninth Circuit's conclusion that California Government Code § 25303 grants to boards of supervisors the authority to direct the manner in which the sheriff's duties are performed. Absent the authority to control or change the release process at the jails, there cannot be section 1983 liability against the public entity defendant.

Nor does California Government Code § 23013 confer upon boards of supervisors the authority to control the sheriff's administration of the jails. Contrary to respondents' characterization of this statute, it does not provide

that a county *controls* the jail, but rather authorizes the county to relieve the sheriff of his/her power and control of the county jail to a county-created department of corrections. If the county already had control over the jails, as the Ninth Circuit erroneously concluded, this provision would be meaningless. Moreover, section 23013 in no way allows the county board of supervisors to oversee the operation of nor institute policies regarding the jail while the sheriff controls the jail, and any failure of the *Peters* court to consider this statute in this context does not dilute the reasoning or soundness of *Peters*. As such, the existence of section 23013 does not, as reasoned by the Ninth Circuit, demonstrate control by the county board of supervisors over the sheriff with regard to the jail release process. It simply authorizes a county to assume control of the jail, something it does not have absent exercise of that statutory authority.[2] Therefore, respondents' suggestion that the holding in *Peters* is somehow inconsistent with section 23013 is a fallacy.

B. The Federal District Court Cases And Other Circuit Decisions Cited By Respondents Do Not Provide Any Useful Analysis Of The Issue Presented In This Petition.

Preliminarily, respondents and the Ninth Circuit's reliance on *Sullivan v. County of Los Angeles*, 12 Cal.3d 710, 527 P.2d 865, 117 Cal.Rptr. 241 (1974) for the suggestion that because a county is vicariously liable for a tort claim

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[2] *Beck v. County of Santa Clara*, 204 Cal.App.3d 789, 251 Cal.Rptr. 444 (1988) is thus irrelevant since the county in that case had already exercised its power under section 23013. In fact, the court in *Beck* conducted a thorough analysis of the California constitution and concluded that it "defines a system of government under which the *state Legislature has paramount control over the definition of the sheriff's duties.*" *Id.*, 204 Cal.App.3d at 796 (emphasis added).

caused by acts of the sheriff's department, the county can therefore be held liable under section 1983 for the same acts, is also misplaced. *Sullivan* involved only state law claims of false imprisonment and contained no analysis of the issue before this Court, i.e., whether the sheriff is a policymaker for the state or county with regard to matters relating to the jail. *Sullivan* dealt exclusively with liability under state law, an analysis which has little if anything to do with section 1983 liability. Since the issue as to whether the sheriff is a policymaker under section 1983 for the state or county is not part of the state law analysis of a false imprisonment claim, *Sullivan* is simply irrelevant. Second, *Sullivan* was decided before this court issued its opinion in *McMillian*, where this court rejected the idea that simply labeling an officer as a state or county officer resolves the issue and that the power to set an officer's salary "does not translate into *control* over him. . . . "

Equally inapplicable are the string of federal district court cases and other circuit decisions cited by respondents which did not analyze *California's* constitutional or statutory provisions. In other words, whether a particular official has final policymaking authority is dependent on the definition of the official's particular function under relevant law of that particular state, and thus, decisions from federal or state courts of other states simply have no relevance in this case.

Moreover, the California federal district court cases cited by respondents, all of which pre-date *Streit*, do not provide any meaningful analytical distinction between what constitutes a law enforcement versus non-law enforcement function. For example, citing *Hawkins v. Comparet-Cassani*, 33 F. Supp. 2d 1244 (C.D. Cal. 1999), *rev'd in part on other grounds*, 251 F.3d 1230 (CA9 2001) respondents acknowledge that sheriffs are state officials

when setting policies and procedures for deputies relating to carrying out the orders of judges. *Hawkins*, however, did not address whether there was any meaningful distinction between establishing policy relating to carrying out the orders of a judge and establishing policy relating to ensuring compliance with judicial orders (i.e., checking for all outstanding warrants or other holds) before releasing inmates from jail. Nor does the Ninth Circuit in *Streit* provide any meaningful basis for distinguishing enforcement of the laws under the State of California and placement of those who violate the laws of the state behind bars. Petitioners certainly do not suggest that sheriffs in California act as final policy-makers for the state and not for the local government in all the wide range of functions that sheriffs perform. Rather, despite respondents' contention, the specific function analyzed by the Ninth Circuit in *Streit* cannot meaningfully be distinguished from the function analyzed by the California Court of Appeal in *Peters*.

Thus, granting the Petition would avoid conflicts between federal and state courts on the interpretation of state law and protect principles of state sovereignty and comity.

II. WHETHER THE SHERIFF'S DEPARTMENT IS A SEPARATELY SUABLE ENTITY IS IRRELEVANT.

Recognizing that *Streit* cannot be reconciled with *McMillian*, *Peters* and *Pitts*, respondents argue that this Court need not address the Ninth Circuit's error since the ultimate result will not be changed even if it is reversed. Respondents' argument misstates petitioners' position and ignores the legal havoc created by *Streit* regardless of the ultimate outcome of the instant case.

Respondents incorrectly assert that "petitioners challenge only the determination that the sheriff is a final policymaker for the county. . . . " (Opp. Brief at 23). In

fact, petitioners challenge the Ninth Circuit's determination that sheriffs in California do **not** act on behalf of the **state** when setting policies governing the release of inmates from the jail. If the Ninth Circuit is incorrect in its interpretation of California law, then it makes no difference whether the Los Angeles Sheriff's Department ("LASD") is suable or not since the policies at issue are those of the State of California, not the County of Los Angeles ("County") or its fiscal subdivision, the sheriff's department.[3]

The *Streit* opinion confuses the elected office of "sheriff" with the department of the sheriff within the county governmental structure. *See* Cal. Govt. Code § 26600; *Hanley v. Murphy*, 40 Cal.2d 572, 575, 255 P.2d 1 (1953). The terms "sheriff" and "LASD" are used interchangeably throughout the opinion, so much so that the court refers to the LASD alternatively as a "policymaker" for the County and as an "entity" in and of itself. *See, e.g.*, App. at A7, A8, A28, A31). The court never explains how the LASD can be an "entity" in one instant and a "policymaker" for another entity the next. Indeed, neither the respondents nor the petitioners have ever suggested that the LASD could function as a "policymaker" for the County. The elected sheriff is the policymaker. (*See* Cal. Govt. Code § 26605 which mandates that the sheriff, not the sheriff's department "take charge of and be the sole and exclusive authority to keep the county jail and the prisoners in it.") The pertinent question is whether or not the sheriff sets that policy on behalf of the state. If so, that

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[3] To say that the "department" is separately suable is really nothing more than re-stating the holding of *Monell v. New York City Dept. of Social Services*, 436 U.S. 658 (1978) that a local governmental entity can be sued under section 1983 for constitutional violations caused by its policies. In this case, the Ninth Circuit has simply held that a department within a local governmental entity is also suable, a rather pointless redundancy.

policy cannot be a basis for entity liability, whether that entity is the county or its subdivision, the sheriff's department.

Finally, insofar as the LASD's entitlement to Eleventh Amendment immunity is concerned, the Ninth Circuit analyzed the same statutory and state constitutional provisions it used in finding that the sheriff does not act on behalf of the state. As with the sheriff, the court applied a functional analysis and concluded that "the LASD is not acting as an arm of the state when administrating the local county jails." (App. at A32.) It necessarily follows, therefore, that a finding that sheriffs in California act on behalf of the state in setting policies governing the jail release process would necessarily change the Eleventh Amendment analysis with regard to the sheriff's department.

CONCLUSION

Contrary to the claim of respondents, the jurisdictional conflict presented in this Petition is one that is proper and ripe for review by this Court. For the foregoing reasons, the Petition for Writ of Certiorari should therefore be granted.

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Respectfully submitted,

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